Supreme Court, U.S.
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NO._____

SUPREME COURT OF THE UNITED STATES

In Re GARY R. WALL, WILLIAM COOKSEY SR, STEPHEN MANOS
Petitioners
v.

ROBERT M. CHEVERIE, CHARLES LECONCHE, DOMINICK LOPREATO, TRUSTEE, JOHN PEZZENTE, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, VERE O. HAYNES, ROBERT D. LUSKIN, MICHAEL S. BEARSE GENERAL COUNSEL LIUNA, FRANK FREEMAN LABORERS' LOCAL 230
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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PETITION FOR WRIT OF CERTIORARI
SUPPLEMENTAL APPENDIX

SUBMITTED BY:
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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GARY WALL, WILLIAM COOKSEY, STEPHEN MANOS
Plaintiffs,

v.

CIVIL ACTION NO:
3:97CV02502(JCH)

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, Etal.,
Defendants,

July 11, 2000

RULING ON PENDING MOTIONS

I. PROCEDURAL HISTORY & MISCELLANEOUS MOTIONS

This case is an action by pro se plaintiffs Gary R. Wall, William Cooksey, Sr., and Stephen Manos against the Laborers' International Union of North America ("LIUNA"), Laborers' Local Union 230, Michael Bearse, Robert Cheverie, Frank Freeman, Vere O. Haynes, Charles LeConche, Robert Luskin, Dominick Lopreato, John Pezzente and Harriet Roman. Over the past two and a half years, several prior versions of the complaint have been filed, and several motions to dismiss made and ruled on. See Dkt. No. 30 (granting Dkt. No. 15 motion to dismiss): Dkt. No. 58 (denying Dkt. No. 55 motion to dismiss); Dkt. No. 97 (granting Dkt. No. 69 motion to dismiss, Dkt. No. 1(Complaint);

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Dkt. No. 59 (Amended Complaint);Dkt. No. 99 (Second Amended Complaint). In addition, parties on both sides have been added by the plaintiffs. See Ruling, September 24, 1998 [Dkt. No. 58]; Endorsement Granting Motion to Add Two New Defendants [Dkt. No. 102].

The complaint presently before the court is Docket No. 99, the Second Amended Complaint. The plaintiffs have filed two motions seeking leave to amend the complaint further to include a new plaintiff, Gene Julian, and to expand on their allegations against defendant Luskin. See Dkt. No. 123; Dkt. No. 145. All of the defendants, with defendant Luskin filing separately, have now moved to dismiss the Second Amended Complaint for failure to state a claim pursuant to Federal rule of Civil Procedure 12(b)(6). See Dkt. No. 105 (Defendants' Motion to Dismiss); Dkt. No. 109 (Defendant Luskin's Motion to Dismiss).

The plaintiffs, in response, moved for a hearing on the motion to dismiss pursuant to Fed. R. Civ. P. 12(d). See Dkt. Nos. 107 and 115. Oral argument was held on the two motions to dismiss and two motions to amend on June 19, 2000. Thus, the relief sought by the plaintiffs' motions for a hearing has been

granted, and the motions will be deemed granted. Similarly, the defendants had moved to stay discovery pending a ruling on their Motion to Dismiss. See Dkt. No. 130. Since the court is now issuing a ruling on the motion to dismiss, the motion for a stay is denied as moot.

Following oral argument, the plaintiffs filed a "Motion Requesting Right to Clarify the Pleadings Pursuant to Rule 14(C)(1)(2) F.R.C.P. in Response to Oral Argument Dated June 19, 2000" [Dkt. No. 55]. The court will now consider the pending motions to dismiss with respect to the existing Second Amended Complaint, then turn to consideration of whether any further amendments will be permitted, and finally address the Motion Requesting Right to Clarify.

II. MOTIONS TO DISMISS

A. STANDARD

When considering a Rule 12(b)(6) motion to dismiss, the court must accept as true all factual allegations in the complaint and draw all inferences from those allegations in the light most favorable to plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). The issue is not whether plaintiffs will ultimately prevail

on their claims, but only whether they are entitled to offer evidence in support of them. Id. Dismissal is warranted only if it is clear that no relief can be granted under any set of facts the plaintiffs can prove consistent with their allegations. Hisbon v. King & Spaulding, 467 U. S. 69, 78 (1984).

Nevertheless, it is also well established that "[w]hile the pleading standard is a liberal one, bald assertions and conclusions of law will not suffice." Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996). A plaintiff must make "the necessary factual averments. . . with respect to each material element of the underlying legal theory" in order to avoid dismissal under Rule 12(b)(6). Fleming v. Lind-Walcock & Co. 922 F.2d 20, 24 (1st Cir. 1990). In considering the sufficiency of a pro se complaint, the court must "construe it liberally, applying less stringent standards than when a plaintiff is represented by counsel." Branham, 77 F. 3d at 628-29 (quoting Robles v. Couglin, 725 F.2d 12, 15 (2d Cir. 1983)).

As a preliminary matter, the court notes that the Second Amended Complaint incorporates by reference the plaintiffs' submissions in compliance with the District of Connecticut's Standing Order on Civil RICO Cases, as well as the affidavits of

Judith Dobrich and Stephen Manos. See Dkt. No. 37; Dkt. No. 52; Dkt. No 100, Dkt No. 101. Therefore, in keeping with the Second Circuit's admonition to construe pro se complaints broadly, the court has reviewed and considered all of these filings in deciding the defendants' motion to dismiss.

B. RICO

The Second Amended Complaint seeks to allege a cause of action under the civil remedy provisions of the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. 1964(c). Second 1964(c) of the United States Code allows "[a]ny person injured in his business or property" because of commission of "prohibited activities" under section 1962 to bring suit in federal court. If such a plaintiff prevails, he may recover threefold any damages sustained, as well as attorneys' fees and costs.

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The plaintiffs allege that they have been deprived of their "Intangible property rights," their right to union membership, their right to employment, the right to vote in union affairs, their due process rights, and their pensions, on account of violations of section 1962(b),(c) and (d).[1] See Second Amended Complaint at 4

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[1] Section 1962(b) states:

It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce 18 U.S.C. 1962(b).

Section 1962(c) states:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of collection of unlawful debt. 18 U.S.C. 1962 (c).

Section 1962(d) prohibits conspiracy to violate any of the other subsections of Section 1962. 18 U.S.C. 1962(d).

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(stating rights and privileges alleged to be violated); Re-pleading of Second Amended Complaint at 6 (describing depletion of plaintiffs Wall and Cooksey's pensions); Standing Order [Compliance], Dkt. No. 37 at 28 (Complaint does not allege a violation of 18 U.S.C. 1962(a).").

Common to both sections 1962(b) and (c), and thus indirectly to section 1962(d) as well, is the phrase "pattern of racketeering activity." Thus, in order to allege a cause of action under any of the civil RICO provisions, the plaintiffs must allege facts that, if proved to be true, would constitute a pattern of racketeering activity.[2] See 18 U.S.C. 1962.

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[2] The plaintiffs contend that this court erred in failing to discuss the nature of the "enterprise" alleged by the plaintiffs in its prior Ruling dated July 29, 1999 [Dkt. No. 97]. See Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Hearing [Dkt. No. 108] at 3(discussing "the Court[']s oversight of the enterprise element in the Court's July 29, 1999 ruling, which was a grave error on the part of the Court"). The plaintiffs state that "[T]here is one thing this pro se understands about RICO concerning Justice; That is: If you can't plead 18 U.S.C.

To show a pattern of racketeering activity, the plaintiffs must plead "at least two acts of racketeering activity, one of which occurred after the effective date of this chapter [October 15, 1970] and the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity." 18 U.S.C. 1961(5). In addition, civil RICO actions have a four year statute of limitations, such that the most recent act in the "pattern" must have

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1961(4) 'enterprise' then you can't plead racketeering injury . . . . "See Plaintiffs Response Motion to Court's "Ruling on Defendants' Motion to Dismiss," attached to Second Amended Complaint.

The plaintiffs are correct that the existence of an "enterprise" is an integral part of a RICO action, but it is not the only requirement under RICO. The curt understands the defendants' argument to be that, even if the court were to assume that such an enterprise did exist, the plaintiffs have nevertheless failed to meet other requirements of alleging a cause of action under RICO – specifically, the defendants argue, the plaintiffs have not alleged a pattern of racketeering activity. Because allegations of a pattern of racketeering activity are a required part of a RICO action based on 18 U.S.C. 1962(b), (c) and (d), the curt must examine whether the plaintiffs have alleged sufficient facts to meet this enterprise, as the plaintiffs suggest. If they have not alleged sufficient facts to meet the "pattern" requirement, however, then the court would not reach the "enterprise" issue and must dismiss the plaintiffs' complaint for failure to state a claim.

occurred within four years of the commencement of the lawsuit.[3] See Agency Holding Corp. v. Malley-Duff & Assoc. Inc. 483 U. S. 143, 156; 107 S. Ct. 2759, 2767 (1987).

The plaintiffs must also allege how the predicate acts are related, and that they amount to, or pose a threat of, continuing criminal activity. See GICC Capital Corp. v. Technology Finance Grp. Inc., 67 F. 3d 463, 465 (2d Cir.. 1995). Finally, the plaintiffs must allege that they were harmed in their property or business by reason of such a pattern of racketeering activity. See 18 U.S.C. 1964(c).

The court must therefore first determine whether the plaintiffs have alleged at least two related predicate acts of racketeering activity within ten years of each other and at least one of which occurred after December 1, 1993. The RICO statute defines "racketeering activity" and details what acts are considered "predicate acts" for RICO purposes. See 18 U.S.C. 1961(1). Of these, the plaintiffs appear to have attempted to allege violations of the mail and wire fraud statutes (18 U.S.C. 1341 and 1343); 18

[3] This lawsuit was commenced by the filing of the original Complaint on December 1, 1997.

U.S.C. 1512(tampering with a witness, victim or informant); violation of the Hobbs Act (18 U.S.C. 1951); and 29 U. S. C. 501(c) (fiduciary responsibilities of labor organization officers; embezzlement of union funds). See Second Amended Complaint at 5.

The plaintiffs additionally cite 18 U.S.C. 2 (aiding and abetting liability); 29 U.S.C. 401 (congressional policy statement for the Labor-Management Reporting and Disclosure Act ("LMRDA")); 29 U.S.C> 411 (bill of rights of members of labor organizations)' 29 U.S.C. 530 (deprivation of union rights by violence or threat of violence); and 18 U.S.C. 1959 (commission of violent crimes in furtherance of racketeering activity).[4]

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[4] The plaintiffs actually cite 29 U.S.C. 1959, see Second Amended Complaint at 5, but no such statute exists, so the court has assumed the plaintiffs intended to refer to 18 U.S.C. 1959 (commission of violent crimes in furtherance of racketeering activity), particularly in light of the plaintiffs' allegations elsewhere in their pleadings that an assault was committed in an effort to maintain control of Local 230.

See Second Amended Complaint at 5. However, none of these are included as "predicate acts" under the civil RICO statute, and therefore, may not be considered in support of the plaintiffs' cause of action.

Turning tot he predicate acts the plaintiffs claim to allege, the court must determine whether the plaintiffs have alleged facts that, if proven, would meet the elements of the predicate offenses.

1. MAIL AND WIRE FRAUD

In order to allege a violation of the mail or wire fraud statutes, 18 U.S.C. 1341-1343, the plaintiffs must comply with the requirements of Federal Rule of Civil Procedure 9(b), which requires the allegations of fraud be stated with particularity. In the RICO context, this means the plaintiffs must "specify the statements [they] claim[] were false and misleading, give particulars as to the respect in which plaintiffs contend the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statement." Moore v. Painewebber, Inc. 189 F.3d 165, 173 (2d Cir. 1999) (quoting McLaughlin v. Anderson, 962 F. 2d 187, 191 (2d Cir.

1992)). The plaintiffs must also identify the "purpose of the mailing within the defendant's fraudulent scheme," see Moore, supra, 189 F.3d at 173, and "allege facts that give rise to a strong inference of fraudulent intent." Id. (quoting San Leandro Emergency Med. Group Profit Sharing Plan v. Philip Morris Cos., 75 F.3d 801, 812, (2d Cir. 1996)). Even if the plaintiffs meet the Rule 9(b) requirements in other respects, their claims must be dismissed if they fail to allege how the statements are fraudulent. See Anatian v. Courts Bank (Switzerland) Ltd. 193 F.3d 85, 88 (2d Cir. 1999).

The court must therefore evaluate each of the alleged fraudulent statements described by the plaintiffs to see if the plaintiffs' allegations meet this standard.

a. Michael Bearse

The plaintiffs state that "Mr. Bearse is being charged with multiple counts of mail fraud . . . the exact dates of all the frauds we are not able to give yet because of the fraudulent concealment of the protective order issued by the NLRB . . . ." Second Amended Complaint at 6. The plaintifs further state that the "without discovery [or filing of a Freedom of Information Act

request with the NLRB] the plaintiff[s] cannot meet the requirements of Standing Order 5(c) under F.R.C.P. 9(b). . . ." Standing Order [Compliance] at 20-21. Given the plaintiffs' admission that they cannot presently meet the pleading requirements of Rule 9(b) with respect to any statements made by defendant Bearse to the NLRB, the court cannot find that any such statements could be considered "predicate acts" for RICO purposes.

The plaintiffs also allege that Bearse committed mail fraud on October 6, 1997 in affidavit filed in another case brought by the same plaintiffs against substantially the same defendants. See Wall v. Construction & Gen. Laborers' Union, Local 230 Civil No. 3:97-CV-942 (D. Conn.) (hereinafter the "942 case"). The plaintiffs state that "Mr. Bearse makes deliberate misrepresentations of readmission practices of Local 230 conspiring with the enterprise to stop Plaintiff[s] Wall and Cooksey from meeting membership requirements." Re-Pleading of Second Amended Complaint at 18; see also Standing Order [Compliance] at 20. The plaintiffs have identified the speaker, the statement, and the place and date of the statement. Their

allegations could be construed as stating that the purpose of the mailing was to mislead the court in order to harm the plaintiffs. However, they have not explained how the statements contained in the affidavit are fraudulent. The plaintiffs have only alleged generally that the statements are false; they have not alleged any facts that would support that conclusion.[5] Similarly, the plaintiffs have not alleged any specific facts that could give rise to a "strong inference of fraudulent intent." Moore, supra, 189 F.3d at 173. The plaintiffs allege generally that Bearse is involved in a conspiracy to keep the plaintiffs out of Local 230, but do not allege any facts that would allow a jury to conclude that, even if such a conspiracy existed, Bearse was a part of it. The court cannot assume from Bearse's position as Regional Attorney for LIUNA that he therefore knew of and is liable for any wrongdoing in which other defendants in this case may have engaged. Therefore,

[5] For example, the plaintiffs have not alleged that the readmission procedure described in the Bearse Affidavit was not in fact the readmission procedure in

the plaintiffs have not pled their mail and wire fraud charges against defendant Bearse and with sufficient particularity.

b. Dominick Lopreato

The plaintiffs allege that, "[s]ince October 15, 1970, Mr. Lopreato has committed multiple predicate acts of . . . mail fraud and wire fraud . . . in the furtherance of an enterprise" Second Amended Complaint at 7. The plaintiffs contend that Lopreato systemically attempted to keep Wall and Cooksey out of the union, presumably because, as the plaintiffs discuss early in their complaint, the plaintiffs were outspoken critics of the union leadership.

The specific acts of mail fraud cited by plaintiffs are three letters dated April 28, 1992, August 25, 1993 and March 7, 1995, from Lopreato to the plaintiffs, in which Lopreato stated that Local 230 would not accept new members unless there were work opportunities available, that there were no referral opportunities available at that time, and that the plaintiffs were welcome to register for referral at any time. See Attachments to Exh. J. to

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place as of October 6, 1997, and the plaintiffs have not alleged that some other readmission procedure was the correct one.

Standing Order [Compliance]. The plaintiffs allege that these letters were fraudulent because Local 230 did take in new members during this time period and yet continued to deny the plaintiffs readmission. See Exh. J to Standing Order [Compliance] at 3.

Here, the plaintiffs have attempted to explain why they think the statements are fraudulent, namely, because the letters state that no referral opportunities were available that would allow more people to become new members, and yet more people were becoming new members. However, the plaintiffs do not allege that any of the new members were in a similar position as themselves. If the plaintiffs were not in a similar position as other candidates, then the fact that other individuals were admitted to Local 230 while they were not has no significance in terms of the plaintiffs' fraud allegations.[6] That is, no trier of fact could reasonably infer,

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[6] In fact, at oral argument, plaintiffs conceded that plaintiff Cooksey became ill before his "number came up" on the referral list, so he clearly was not denied a referral or a spot on the referral list for a discriminatory purpose. Further, the letters concern the availability of job referrals, not admission to the union, and plaintiff Wall similarly conceded at oral argument that he was allowed to register for referral and did so, and eventually was referred out to a job.

without more, that the letters were fraudulent from the sole fact of the denial of plaintiffs' readmission to the union. Therefore, since the plaintiffs have not adequately pled facts that either explain how the statements are fraudulent or give rise to an inference of fraudulent intent, the court has no choice but to dismiss these claims as well.

c. John Pezzente and Charles LeConche

For both Pezzente and LeConche, the plaintiffs cite two letters, dated January 5, 1996 and January 9, 1996, and essentially argue that, because the two letters appear to contradict one another, at least one of them must be fraudulent. The first letter is to plaintiff Wall and states that non-members may sign the referral list, but that Wall may be a "barred individual" under the LIUNA Ethics Code and may therefore not be eligible for membership. The second letter is to plaintiff Cooksey and similarly states that non-members may sign the referral list, but notes that "employment under our collective bargaining agreement does not make you a member." See Attachments to Exh. J. to Standing Order [Compliance] [Dkt. No. 37]. The plaintiffs allege that this represents a "change in policy" and that it was made because Wall

as "getting close to getting a job." See Exh. J. at 3. The plaintiffs further state that Wall was referred to a job shortly thereafter, but was not allowed readmission. See id.

However, yet again, the plaintiffs do not allege facts that would show why either of the two statements are false. Neither letter states or even implies that getting a job referral would automatically result in readmission. To the contrary, the letter to plaintiff Cooksey specifically notes that getting a job referral does not mean automatic membership. Conversely, neither letter states that the plaintiffs would necessarily be denied readmission. Rather, the letters suggest a course of action to the plaintiffs and attempt to explain to the plaintiffs what may or may not occur as a result of following that course of action. The plaintiffs do not allege any facts to support their contention that LeConche and Pezzente intended to defraud the plaintiffs, other than, again, their general allegations of conspiracy against the plaintiffs. Thus, the plaintiffs have not alleged facts sufficient to meet the requirements of Rule 9(b) with respect to the LeConche/Pezzente letters.

The plaintiffs further contend that the two letters are evidence that LeConche's affidavit, filed in the 942 case, in which

he stated that the plaintiffs never tried to join the union but only wanted to be readmitted on their old books, was a fraud. See Exh. J. to Standing Order [Compliance] at 4. As stated above, the letters are clear in stating that the plaintiffs could work, assuming jobs were available, but were not guaranteed readmission and, further, that if the plaintiffs were readmitted, they might have to participate in a LIUNA ethics hearing. The plaintiffs have not explained how any of these statements are false, or misrepresent anything about LIUNA's admission policies. Nor have they alleged any facts --for example, facts surrounding their own, actual efforts to seek readmission - - that would allow the court to infer that the statement was false.[7]

[7] When asked at oral argument to explain how the statements were false, plaintiff Wall stated that it was because the union would not let him back in. The fact that the union denied him readmission is not inconsistent with anything in the letters or affidavit.

Thus, the plaintiffs have again failed to meet the requirements of Rule 9(b).

d. Robert Cheverie

The plaintiffs have identified two grounds on which defendant Cheverie is allegedly liable for mail and wire fraud. One is an April 9, 1996 letter from Robert Cheverie to Robert Lill in the Office of the Inspector General, and the second is that he allegedly instructed defendants Roman and LeConche to file fraudulent affidavits and is therefore indirectly liable for mail fraud. See Exh. J. to Standing Order [Complaince] at 5.

With respect to the April 9, 1996 letter, the plaintiffs allege that the passage "finally, the brutal beating of John Pezzente at his home two days after Christmas is undoubtedly linked to Mr. Wall's criminal associations. In this regard, Wall was observed by Pezzente in the presence of Grasso shortly before the beating occurred" was fraudulent, and that it constitutes both mail and wire fraud because the letter was evidently both mailed and faxed. See Second Amended Complaint at 14-15. The plaintiffs contend that the 1996 letter was fraudulent because it inaccurately implicated

Wall, Cooksey and William Grasso in a 1985 assault on John Pezzente. To this end, the letter allegedly also relies on the inaccurate statements of John Pezzente in a statement to the police in which he described seeing Wall nearby with a car matching the description of Wall's wife car. Wall contends that the statement had to be false because Wall's wife's car had been stolen several months prior to the date in question. See Exh. J. to Standing Order [Compliance] at 6. He further contends that Pezzente himself admitted that it was a false statement in a later deposition. See Re-Pleading of Second Amended Complaint at 14. The plaintiffs allege that the April 9, 1996 letter "was meant to create an intolerable and unsafe atmosphere in the union, workplace and the street directed at Plaintiff Wall and Plaintiff Cooksey." Standing Order [Compliance] at 16 [Dkt. No. 37].

However, the plaintiffs again fail to allege any facts on which the court could rely in concluding that the April 9, 1996 letter was written with fraudulent intent. In fact, the plaintiffs seem to take the position that the 1996 letter was written in reliance on the 1985 police report, which included an early (allegedly false) statement by Pezzente with respect to Wall's car.

Assuming the 1985 police report was incorrect, the plaintiffs provide no factual basis for concluding anything other than that Cheverie adopted the police report as accurate when he composed the April 9, 1996 letter. There are no specific facts alleged from which the court could conclude that the April 9, 1996 letter was knowingly false or from which the court could infer the requisite fraudulent intent on Cheverie's part.[8]

e. Harriet Roman

At oral argument, the plaintiffs stipulated to the withdrawal of Harriet Roman as a defendant. Since acts must be committed by a defendant to be considered predicate acts, and Roman is no longer a defendant, the court will not consider any of the plaintiffs' allegations against Roman as forming predicate acts for RICO purposes.

f. Robert Luskin

[8] At oral argument, plaintiffs argued that the reason they believed Cheverie had fraudulent intent was because he was "very involved" in "every aspect" of Local 230. The fact that Cheverie is associated with the management of Local 230 is not enough for the court or any other trier of fact to infer fraudulent intent.

With respect to Robert Luskin, the plaintiffs appear essentially to be arguing that they were sent a number of mixed signals regarding the readmission process. They allege that a July 24, 1996 letter from Luskin, sent by fax to the plaintiffs' prior attorney, Mark Mercier, was wire fraud. That letter stated, "I have directed Local 230 to permit Messrs. Wall and Cooksey to exercise their right to readmission. . . .As I understand matters, it is now for Messrs. Wall and Cooksey to decide whether or not they wish to exercise their right to re-admission, based in part upon the issues that you and I discussed." Exh. J. to Standing Order [Compliance] (Dkt. No. 37) at 1. The plaintiffs apparently contend that this statement directly contradicts a statement made in a declaration filed by Luskin in the 942 case, which stated, "upon review of LIUNA's long established interpretation and application of its constitutionally based readmission right I concur that readmission right afforded members of LIUNA must be exercised within twelve (12) months of a members dues delinquency," except where such delay was due to conduct prohibited by one of the LIUNA governing documents. See Exh. J to Standing Order [Compliance] at 1-2. They also contend it was contradicted by Bearse's

statements in an affidavit dated October 6,1997, and a January 1996 letter from Bearse to Wall stating that his understanding was that the plaintiffs had been registered for job referrals by Local 230. However, they have not alleged any facts, other than a general conspiracy theory, to explain how these various statements are fraudulent, or why they must be fraudulent rather than merely reflecting the efforts of plaintiffs' prior counsel and attorney Bearse to negotiate the plaintiffs' readmission to the union.

g. Other Fraudulent Statements

Finally, with respect to 1997 incident, the plaintiffs allege that "[I]n October 1997, the officers collectively used the mails to the membership [of Local 230] this following statement. . .:

> [C]ontrary to Brother Manos' wild imagination, there was no assault during the July Executive Board Meeting at Capriccio Restaurant. The minutes are accurate as accepted by the Executive Board. The Hartford Police have already dropped the case and the GEB will do the same.

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Second Amended Complaint at 17.[9] The plaintiffs allege these statements are fraudulent because Stephen Manos was assaulted during the July Board Meeting, allegedly for questioning the management of Local 230's finances and cooperating with federal investigators, and that the letter was mailed to intimidate Manos and other potential critics of the union leadership.

Here, the plaintiffs have identified the time, content and place of the statement, generally identified the speakers, and stated the alleged purpose of the letter. Moreover, the plaintiffs have adequately alleged facts from which the court can draw an inference of fraudulent intent: The officers of Local 230 were presumably in attendance at the July 30, 1997 meeting and were therefore in a position to know whether Manos was assaulted at that meeting. Assuming the plaintiffs are correct and Manos was assaulted at the meeting, the officer of Local 230 must therefore have known that a statement to the contrary was a false or misleading statement. Thus, the court will consider the allegations

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[9] At oral argument, the plaintiffs clarified that the "officers" to whom they were referring were LeConche, Pezzente and Vere O. Haynes.

concerning the mailing of this statement to Local 230's members as a "predicate act".[10]

2. WITNESS TAMPERING

The plaintiffs also claim they are alleging a violation of 18 U.S.C. 1512 as a predicate act for RICO purposes. Section 1512 generally tampering with witness, victims or informants in an effort to affect their testimony or communications with law enforcement officials.[11]

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[10] The defendants argue that because the plaintiffs have not alleged that anyone relied on the statement or that they were harmed by it, their allegations must fail. However, the plaintiffs are alleging fraud under the mail fraud statute, not common law fraud. Reliance and damages are not incorporated into the federal mail fraud statute. See Neder v. United States, 527 u. S. I, 24-25 (1999). Thus, the plaintiffs; failure to allege reliance or damages is not fatal to this predicate act.

[11] Section 1512(a) makes punishable the killing or attempted killing of a person with the intent to prevent his testimony, prevent the production of documents, or prevent any person from communicating with federal law enforcement officers regarding the commission or possible commission of a federal offense. See 18 U.S.C. 1512(a).

Section 1512(b) makes punishable the knowing use of intimidation or physical force, bribery, or fraud with intent to (1) influence or prevent that person's

On the face of the pleadings, the plaintiffs appear to be alleging a claim against Frank Freeman, who allegedly "assaulted Mr. Manos for the purpose of maintenance and control of the enterprise" at a meeting on July 30, 1997. Second Amended Complaint at 9. However, at oral argument, the plaintiffs contended that they were not attempting to allege a witness tampering claim against Freeman, but rather were alleging that LeConche interfered with Manos' possible testimony or assistance to law enforcement by filing suit against him.

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testimony in an official proceeding, (2) cause that person no withhold testimony, alter documents, or refuse to comply with a subpoena, or (3) cause that person to fail to provide a federal law enforcement officer with information relating to the commission or possible commission of a federal offense. See 18 U.S.C. 1512(b).

Section 1512(c) makes punishable harassment which dissuades or prevents a person from (1) testifying in an official proceeding, (2) reporting the commission or possible commission of a federal offense to law enforcement officers, (3) arresting or seeking another's arrest in connection with federal offense, or (4) causing a criminal prosecution or other criminal proceeding to be instituted. See 18 U.S.C. 1512 (c).

The statute specifically states that an official proceeding need not already be pending at the time of the offense. See 28 U.S.C. 1512 (e)(1).

Neither the alleged assault by Freeman, which plaintiffs themselves allege in their pleadings was in response to criticisms Manos made of the union's accounting practices, nor the lawsuit filed by LeConche, as to which the plaintiffs have not made any allegations, alone constitute sufficient evidence of witness tampering. The plaintiffs do not contend that the assault was for the purpose of preventing Manos from testifying in any official proceeding or even that it was related to Manos' alleged cooperation with federal law enforcement officials. Although the plaintiffs did argue at oral argument that the filing of the lawsuit by LeConche was intended to prevent Manos from speaking with federal law enforcement officials about the management of the union, the mere allegation that LeConche filed a lawsuit cannot state a cause of action for "intimidation or physical force, bribery, or fraud" under section 1512(b). Nor does it, without more, rise to the level of "harassment" actionable under section 1512(c).[12] Thus, the allegations of witness tampering, even construed as broadly as possible and taking into consideration plaintiffs'

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[12] The court is unaware of any case in this Circuit holding that the bringing of a lawsuit is actionable under section 1512.

explanations at oral argument, cannot constitute a predicate act under RICO.

3. HOBBS ACT

The plaintiffs next claim to allege violations of the Hobbs Act (18 U. S.C. 1951),[13] which prohibits interference with commerce by threats or violence.[14]

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[13] On pages 9-10 of the plaintiffs' compliance with the Standing Order on RICO Civil Cases [Dkt. No. 37], the plaintiffs appear to be alleging that, instead of a Hobbs Act claim under 18 U.S.C. 1951, they are actually trying to allege a violation of 29 U.S.C. 530. See e.g. Standing Order [Compliance] at 9 (distinguishing elements of Hobbs Act violation from elements of section 530 violation). However, since violations of 29 U.S.C. 530 are not predicate acts for RICO purposes, the court will continue to construe the plaintiffs' complaint as alleging Hobbs Act and witness tampering violations instead.

[14] Section 1951 states, in relevant part, "Whoever in any way or degree obstructs...commerce...by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section, shall be fined under this title or imprisoned not more than twenty years, or both." 18 U. S.C. 1951(a). The Act defines "extortion" as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. 1951(b)(2).

The "Property the plaintiffs contend was extorted from them includes their membership rights (see Second Amended Complaint at 6) and right to work. See Re-Pleading of Second Amended Complaint at 16 ("The Hobbs Act where Plaintiff Wall consensually gives up his book pursuant to a settlement with the union and the NLRB and Mr. Cooksey is told by the NLRB he will get his book back per the settlement.")[15]

However, the plaintiffs only allege in a conclusory fashion that extortion has occurred.[16] They do allege that threats were

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[15] More generally, the plaintiffs allege that historically, the union has conducted "shakedown collections for everything" and that Wall was removed as shop steward due to his refusal to make such collections. See Standing Order [Compliance] at 5 (citing ruling of Judge Wallace Nation in NLRB Case No. 39-CB-827). However, this matter was apparently resolved before the NLRB. Moreover, the plaintiffs do not allege any time frame for any adverse actions taken against them by the union. The plaintiffs also do not allege that Wall consenually stepped down as shop steward in response to threats or physical violence, so any adverse employment action taken against Wall cannot qualify as a Hobbs Act violation. See 18 U.S.C. 1851(b)(2) (element of extortion is that property be taken with the victim's consent).

[16] See e.g., Re-Pleading of Second Amended Complaint at 7 ("Plaintiff Manos experienced a violent extortion and was forced into retirement through fear.");

made by LeConche, see, e.g., Amended Statement in Compliance with Standing Order [Dkt. No. 52] at 12-13, and that one of the plaintiffs was assaulted, see e.g., Amended Statement at 9, but they have not alleged that they parted with their union books or their pensions or any other property voluntarily, as a direct result of such threats of force or violence. In fact, nothing in the plaintiffs' pleadings even places the alleged threats in the same time period as the loss of the plaintiffs' union memberships. Rather, the materials submitted by the plaintiffs themselves indicate that the plaintiffs were removed from union membership for failure to pay union

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Second Amended Complaint at 6 ("Mr. Bearse is being charged with…the extortion of Plaintiff Wall and Cooksey's membership rights…") Second Amended Complaint at 7 ("Since October 15, 1970, Mr. Lopreato has committed multiple predicate acts of extortion of the plaintiffs[']membership rights..and pension rights in the furtherance of an enterprise."; "Mr. Pezzente has made extortion collections on construction jobs for Dominick Lopreato, Arthur Coia, Sr., Arthur Coia, Jr. and Charles LeConche"); Second Amended Complaint at 8 ("Mr. LeConche has extorted the membership right of all three plaintiff[s] in separate schemes."); Second Amended Complaint at 8 (Mr. Cheverie['s] actions go beyond that of legal counsel through the commission of multiple predicate acts of extortion of membership rights….").

dues.[17] Nor do the plaintiffs allege that any such threats or extortion affected commerce in any way. See 18 U. S.C. 1951. Thus, the plaintiffs have failed to allege facts that, if proven, would support a finding of a Hobbs Act violation as a predicate act under RICO.

4. EMBEZZLEMENT OF UNION FUNDS

The plaintiffs cite to 29 U.S.C. 501 in their complaint, see Second Amended Complaint at 5. Only subsection (c) of that statute can be a predicate act under RICO. See 18 U.S.C. 1961(1). However, the plaintiffs have not alleged sufficient facts in support of this predicate act. The court presumes the plaintiffs are referring to actions taken by Local 230 with respect to their pension funds. However, the plaintiffs have not alleged that the plaintiffs' pension funds were ever the property of the union, nor

[17] The plaintiffs have not alleged that they failed to pay their union dues out of fear caused by any of the defendants.

that they were converted to the personal use of the defendants.[18] Moreover, the plaintiffs have not identified the dates on which any such acts occurred, so the court is unable to determine whether such acts occurred within the four year statute of limitations or within ten years of any other predicate acts.

5. OTHER RICO ELEMENTS

As the plaintiffs have failed to allege sufficient facts to establish two predicate acts, the court need not further consider whether the plaintiffs have met the other elements of RICO claim. However, the court does note that, even if two predicate acts had been adequately pleaded, the plaintiffs have not met the other requirements of pleading a "pattern of racketeering activity."

First, the plaintiffs have not alleged that the acts were related. Predicate acts are "related" when they have "the same or

[18] At oral argument, the plaintiffs clarified that the pension fund issue fell within the scope of this lawsuit because Lopreato was also the trustee of the fund. However, this does not make the pension fund money "union property," nor is an allegation as to Lopreato's position with respect to the fund sufficient for a trier of fact to infer that Lopreato took the money in the fund for his personal use.

similar purposes, results, participants, victims, methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." See Bernstein v. Misk, 948 F. Supp. 228,236 (E.D.N.Y. 1997) quoting H.J. Inc. v. Northwestern Bell Tel Co., 492 U. S. 229, 240 (1989)).

Although the plaintiffs' pleadings provide a lengthy background on corruption in Local 230 dating back to 1970, nothing in the pleadings serves to connect such events to the events they claim are "predicate acts." Other than general allegations that Local 230 has been under the control of Arthur Coia and his cohorts, nothing connects the defendants' alleged predicate acts to one another or the alleged Coia "machine" other than the mere fact that each of the defendants is an employee or member of Local 230, and thus are alleged to have been committing these wide-ranging acts in order to maintain the alleged "enterprise." In fact, no one defendant is alleged to have committed or been involved in more than one or two of the alleged acts. See, e.g. United States v. Private Sanitation Industry Ass'n of Nassau/Suffolk, Inc. 793 F. Supp. 1114, 1128 (E.D.N.Y. 1992) (clarifying that section 1962(c) "declares it illegal for a person - -not for an enterprise - -to engage

in a pattern of racketeering activity" and therefore finding that plaintiff had to allege pattern of racketeering activity conducted by each defendant, not merely the "enterprise") (quoting United States v. Persico, 832 F.2d 705 (2d Cir. 1987)).

Second, although the plaintiffs have generally alleged that the Coia enterprise is an ongoing illegal operation, no specific facts plead by the plaintiffs suggest that the alleged improper acts committed by the defendants amount to or pose a threat of continuing criminal activity, which is another required element of civil RICO cause of action. See generally H. J., Inc. supra, 492 U. S. 229 (defining continuity requirement). The plaintiffs have not explained what illegal purpose such an extensive enterprise serves. Although they have alleged that the enterprise sought to keep the plaintiffs out of the union, they have not alleged how that constitutes an ongoing operation or how it is illegal. The plaintiffs have not even alleged facts that if proven, would show that they are legally entitled to be reinstated as union members.

Thus, having failed to plead facts sufficient, if proven, to constitute a pattern of racketeering activity, the plaintiffs have failed to state a claim under the civil RICO statute.

The court notes that it is bound to construe pro se complaints broadly, and that courts should afford pro se litigants "every reasonable opportunity" to demonstrate they have a valid claim. See Bobal v. Rensselaer Polytechnic Institute 916 F. 2d 759, 762 (2d Cir. 1990) (citations omitted); see also Branum v. Clark 927 F.2d 698 (2d Cir. 1991) (finding courts "should not dismiss without granting leave to amend at least once"). However, the court need not provide a pro se plaintiff unlimited opportunities to replead a complaint. See, e. g., Barsella v. United States 135 F.R.D. 64, 66-67 (S.D.N.Y. 1991) (dismissing amended complaint and denying leave to amend where court had advised pro se plaintiff of deficiencies in earlier version of complaint and plaintiff failed to correct deficiencies) (citing Salahuddin v. Cuomo, 861 F2d 40, 42 (2d Cir. 1988)). See also Hitchcock v. Woodside Literary Agency, 15 F. Supp. 2d 246, 252 (E.D. N. Y. 1998) (dismissing RICO complaint with prejudice where plaintiff had, "on her second attempt, fallen far short of stating a claim under

RICO and set forth no facts that suggest that she could ever succeed in this regard"); Brown v. Resolution Trust Co., 1995 WL 43674 at *5 (S.D. N. Y 1995) (allowing pro se plaintiffs to replead a seond time, but warning that "they will not be afforded this opportunity again").

In this case, the complaint has already been dismissed twice and the plaintiffs were granted leave to replead each time. In total, three versions of the Complaint and numerous supporting documents, including affidavits, exhibits, and additional filings such as the Compliance with the Standing Order on Civil RICO cases have been filed and treated liberally by the court as incorporated into the Complaint. In the court's last ruling on a motion to dismiss, dated July 29, 1999, the court clearly indicated that the plaintiffs were required to allege a pattern of racketeering activity in order to state a claim under RICO. See Ruling [Dkt. No. 97] at 2. The court explained that, in order to prove a pattern of racketeering activity, the plaintiffs had to allege two predicate acts and had to show that the predicate acts were related and amounted to, or posed a threat of, continuing criminal activity. The court further stated the elements of Hobbs Act violation and

explained that the plaintiffs had not pled facts that, if true, would meet these elements. The mail and wire fraud claims were similarly dismissed at that time because, as the court explained, the plaintiffs had not adequately explained how the statements were deceptive or misleading under Rule 9(b). Finally, the court then also explained that the plaintiffs had to allege facts that would allow that the acts were related and could constitute continuing criminal activity.

Despite the court's effort to explain to the plaintiffs that they must allege facts to support all of the elements of a RICO cause of action, the plaintiffs have continued to insist that all they must allege to state a claim under RICO is the existence of an "enterprise." The plaintiffs have not remedied the pleading deficiencies with respect to their RICO claim that the court specifically identified in its July 1999 Ruling. The plaintiffs were advised in July of 1999 that they would only be allowed "one final opportunity" to replead their claims if they had a proper basis to do so. See Ruling [Dkt. No. 97] at 6 (emphasis in original). They have not done so. The court therefore dismisses with prejudice the plaintiffs' RICO claim as to all defendants.

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C. PROCEDURAL DUE PROCESS

In addition to their RICO claim, the plaintiffs also allege that defendant Luskin violated the plaintiffs' due process rights.[19] The first question the court must determine is whether defendant Luskin can be said to be a "state actor" for purposes of a due process claim.

The plaintiffs allege that because Luskin has been appointed by the Department of Justice as an "in-house prosecutor per agreement with the Department of Justice," he is a government

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[19] The court notes that the plaintiffs cite to the Due Process Clause of the Fourteenth Amendment, which states, in relevant part, "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U. S. Const. Amend. XIV, 1. However, the Fourteenth Amendment applies only to actions taken by state governments. The plaintiffs have not alleged that defendant Luskin was acting under authority granted to him by the State of Connecticut or any other state, but rather, they allege that he was acting under authority delegated by the federal Department of Justice. The court therefore construes the plaintiffs' claim as one that they intended to bring under the Fifth Amendment to the United States Constitution, which applies to action taken by the federal government and states, "No person shall . . .be deprived of life, liberty, or property, without due process of law." U. S. Const. Amend. V.

actor. As far as the court can gather form the materials submitted by the plaintiffs, Luskin is the General Executive Board Attorney for LIUNA. Other than the fact that LIUNA entered into an "operational agreement" with the Department of Justice, and the fact that Luskin was appointed GEB Attorney pursuant to that agreement, the plaintiffs allege no facts that support a conclusion that Luskin is a government actor.

Looking therefore to Exhibit F to the plaintiffs' Standing Order [Compliance] [Dkt. No. 37], the court notes that the "Operating Agreement" was designed to be a less formal agreement than a consent decree, with less direct government involvement in the management of the union. See Exh. F to Standing Order [Compliance] at 50-54. The Second Circuit has consistently held that persons appointed to union management positions pursuant to a consent decree are not necessarily government actors, even where their salaries may be paid by the

government. See United States v. International Bhd. of Teamsters, 156 F3d 354, 359-60 (2d Cir. 1998).[20] What would be required for state action in this case is that defendant Luskin be acting at the direction of the Department of Justice, and that his actions taken pursuant to such direction be in violation of the plaintiffs' due process rights.

The plaintiffs have not alleged that Luskin is an employee of the Department of Justice, nor have they complained of any actions taken by him at the direction of the Department of Justice.

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[20] Plaintiffs attempt to distinguish this case because the IBT case involved a "consent decree," as opposed to the "operational agreement" in effect here. However, from the documents submitted by the plaintiffs themselves and incorporated by reference into the Complaint, it appears that the operational agreement entails even less government involvement and oversight than a consent decree would. See Exh. F to Standing Order [Compliance] [Dkt. No. 37]. Thus, if a union manager paid by the government under a consent decree is not, as a matter of law, a "state actor," then a union manager not paid by the government under the operational agreement similarly could not be considered a "state actor." Moreover, the LIUNA Constitution has incorporated the operational agreement in the same way the IBT has incorporated the consent decree into its Constitution, thus making the Second Circuit's reasoning applicable here.

In fact, other than the actions the plaintiffs complain of with respect to their RICO claim, the plaintiffs have not alleged any actions taken by Luskin that could amount to a violation of the due process clause. As counsel for the defendants observed at oral argument, it is not at all clear from the Complaint what it is the plaintiffs claim Luskin has done wrong.

For the foregoing reasons, the plaintiffs' claim against defendant Luskin for violation of the due process clause is dismissed. However, unlike the RICO claims, this Ruling is the first time the court has addressed the plaintiffs' due process claim against Luskin.[21] Therefore, the court grants the plaintiffs one final opportunity to replead as to their due process claim only, and only if they can allege sufficient facts that, if proved, would show that (1) defendant Luskin is acting at the direction of the government, or pursuant to some rule of conduct imposed by the government, and (2) that defendant Luskin's actions resulted in the

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[21] The Amended Complaint [Dkt. No. 59] made mention of the claim, but it was not addressed in the July 1999 Ruling and was not subject to the court's warning in that Ruling that the plaintiffs would only have one last opportunity to amend their claims.

deprivation of the plaintiffs liberty or property interests without due process of law. Should the plaintiffs choose to file an amended complaint in accordance with this order, the court reminds them that they need not cite cases in their complaint, but, pursuant to Federal Rule of Civil Procedure 8(a), must include only a "short and plain statement of the claim." Fed. R. Civ P. 8(a)

III. MOTIONS TO AMEND

The plaintiffs have filed two motions seeking leave to amend their complaint further. The first proposes to add Gene Julian as a plaintiff, while the second seeks to add an additional claim against defendant Luskin.

Pleadings may be amended, pursuant to Federal Rule of Civil Procedure 15(a), once as of right, and thereafter only by leave of the court or stipulation. Leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). "Narrow pleading rules should not be applied to foil an honest plaintiff's efforts to gain redress," and undue delay alone is generally not a valid reason to deny a motion to amend. Middle Atlantic Utilities Co. v. S.M.W. Development Corp. 392 F.2d 380, 384,85 (1968)

(holding three year delay from filing of initial complaint inadequate basis for denying motion to amend, in absence of bad faith or prejudice to defendant). However, leave to amend may be denied, in the court's discretion, when such amendments would cause prejudicial delay, are offered in bad faith or for a dilatory motive, or would be futile, or when they come after repeated failure to cure deficiencies by amendments previously allowed. See Forman v. Davis 371 U.S. 178, 182 (1962). Applying this standard, the court turns to the plaintiffs two motions to amend.

A. DEFENDANT LUSKIN

Subsequent to the filing of defendant Luskin's Motion to Dismiss, the plaintiffs filed a motion to amend seeking to add new allegations to their claims against defendant Luskin. This time, plaintiffs appear to be attempting to add a claim that defendant Luskin has violated the Equal Protection Clause of the Fourteenth Amendment. See Memorandum of Law In Support of Plaintiffs' Motion at 2-3 (citing Equal Protection cases). However, the Equal Protection Clause applies only to those acting under color of state law. In this case, for such allegations to state a cause of action,

Luskin would have to be acting as an employee, official or agent of the State of Connecticut. There are no allegations in the Complaint or in the plaintiffs' motion that would suggest that he is a Connecticut official, employee or agent, or an official, employee or agent of any other state. The only government connection the plaintiffs have mentioned anywhere in their pleadings and briefs with respect to defendant Luskin is an alleged connection to the Department of Justice. Because the Fourteenth Amendment only applies to the states, actions by federal officials or employees cannot be Fourteenth Amendment violations.

Since adding an Equal Protection claim would be futile in this case, the plaintiffs' motion to amend to add an equal protection against defendant Luskin is denied.

B. GENE JULIAN

The plaintiffs have also moved to amend to add Gene Julian as an additional plaintiff with respect to their RICO claim. At oral argument on the various pending motions, the plaintiffs agreed to withdraw this motion. However, the plaintiffs have not filed a withdrawal of the motion. The court therefore denies the

motion without prejudice to renew, in keeping with the agreement of the parties at oral argument that Gene Julian need not be added as a party.

IV. MOTION TO CLARIFY

Following oral argument on June 19, 2000, the plaintiffs filed a motion seeking leave to further clarify the pleadings filed to date. In support of the plaintiffs' motion, they renew their argument that the court and the defendants should be focusing on the plaintiffs' allegations of an "enterprise," rather than the "pattern of racketeering activity" element. See Memorandum In Support [Dkt. No. 156] at 3. As noted in Footnote 3, supra, focusing on the "enterprise" aspect of the plaintiffs' RICO claim would not make any difference in the outcome of this ruling, because the plaintiffs have not met other, equally important RICO elements, including alleging a pattern of racketeering activity. Thus, "clarifying" the pleadings by adding "[a]n explanation of the amplified pleading to show an 'enterprise'" would not assist the court in making its determination, and denying the plaintiffs leave to file additional materials on that point will not prejudice them.

In addition, although the plaintiffs have not attached a proposed amended pleading or clarifying pleading to their motion, they do represent the following:

> The amendment will . . . give the defendants a clear showing of what they have to defendant against. It will not be lengthy and there will be no new facts. . . It will refer to conduct already plead to date. . . .
>
> It will be . . .on facts already pleaded to date that will be referred to in the presentation of the violations format.

See Memorandum in Support at 6-7. The court appreciates the plaintiffs' efforts to further clarify and better organize the issues. However, the difficulty faced by the court in addressing the pending motions to dismiss is not merely the organization of the factual allegations, but their sufficiency. In short, in the absence of additional facts, which the plaintiffs are unable to allege in good

faith at this time,[22] it appears that the plaintiffs cannot state a claim under RICO and will likely not be able to do so, Thus, the court does not need additional clarification as to the meaning of the "enterprise" and the organization of their factual allegations, and the plaintiffs' motion is denied.

V. CONCLUSION

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[22] The plaintiffs conceded at oral argument, with respect to several of their claims, that they would not be able to allege additional facts without discovery. Unfortunately, under the Federal Rules of Civil Procedure, the plaintiffs are not entitled to discovery in search of a sufficient factual basis to support their complaint. See. e. g. Segan v. Dreyfus Corp. 513 F.2d 695, 696 (2d Cir. 1975) (finding motion for discovery properly denied where plaintiff sought broad discovery prior to filing more definite statement of fraud); Solarex Corp. v. Arco Solar, Inc. 121 F.R.D. 163,79 (E.D.N.Y. 1988) ("in this Circuit, it is established that, at least with respect to allegations of fraud or inequitable conduct, it is improper to use discovery in search of a factual predicate required to be pleaded in the first instance.") (citations omitted); Robco Distribs, Inc. v. General Glass Int'l Corp., 101 F.R.D. 547, 548 (E.D.N.Y. 1984) (noting that a party "may not employ discovery for a 'fishing expedition'" and that "Rule 11 requires that an attorney filing a complaint certify that the complaint is well grounded prior to discovery").

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In conclusion, the plaintiffs' motions for a hearing on the motions to dismiss [Dkt. Nos. 107 and 115] have been GRANTED, and oral argument was held on June 19, 2000.

Defendant Cheverie, et al's Motion to Dismiss [Dkt. No. 105] is GRANTED with prejudice, and defendant Luskin's Motion to Dismiss [Dkt. No. 109] is GRANTED with prejudice except that it is without prejudice as to the due process claim only. The plaintiff is given leave to replead as to the due process claim against Luskin only, in accordance with this Ruling, within 30 days of the date of this Ruling.

Plaintiffs' Motion to Amend to add an equal protection claim against defendant Luskin [Dkt. No. 145] is DENIED as futile. Plaintiffs' Motion to Amend to add Gene Julian as a plaintiff [Dkt. No. 123 is DENIED per agreement of the parties on the record. Plaintiffs' Motion to Clarify [Dkt. No. 155] is DENIED as futile, and defendants' Motion to Stay Discovery [Dkt. No. 130-2] is DENIED as moot in light of the instant Ruling.

Finally, at oral argument on June 19, 2000, Attorney Reed made an oral motion to withdraw as counsel for LIUNA, which

was granted by the court. Therefore, plaintiffs' Motion for Clarification of Representation of Defendant Luskin and LIUNA [Dkt. No. 140] was GRANTED and the matter was clarified on the record.

SO ORDERED.

Dated at Bridgeport, Connecticut this 11th day of July, 2000.

Janet C. Hall

United States District Judge

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

GARY R. WALL,
WILLIAM COOKSEY, SR.
STEPHEN MANOS 3;97CV2502 JCH

v.

ROBERT LUSKIN, VERE O HAYNES,
MICHAEL S. BEARSE, LABORS LOCAL 230,
LABORERS INTERNATIONAL UNION,
DOMINICK LOPREATO, JOHN PEZZENTE,
CHARLES LECONCHE, ROBERT CHEVERIE,
HARRIET ROMAN, FRANK FREEMAN,
LUSKIN/COIA/LOPREATO GROUP,
"L.C.L." THE ENTERPRISE

JUDGMENT

This matter came on before the Honorable Janet C. Hall, United States District Judge, as a result of defendants' motions to dismiss.

The Court has reviewed all of the papers filed in conjunction with the motion and heard oral argument. On July 12, 2000, a Ruling on Pending Motions entered granting the defendants' Cheverie, et al motion to dismiss with prejudice and granting defendant Luskin's motion to dismiss with prejudice except that it is without prejudice as to the due process claim only.

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Therefore, it is ORDERED and ADJUDGED that judgment is entered for the defendants and the case is closed.

Dated at Bridgeport, Connecticut, this 14th day of July, 2000.

KEVIN F. ROWE, Clerk

By CHYSTINI O. CODY
Deputy-in-Charge

Entered on Docket_____

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